

**FILED**

**OCT 12 2004**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. Bill Lockyer,  
Attorney General,

Plaintiff - Appellant,

v.

TRANSCANADA POWER L.P., a  
Canadian Limited Partnership;  
TRANSCANADA POWER SERVICES  
LTD., a Canaca Corporation;  
TRANSCANADA ENERGY, a Canadian  
Corporation,

Defendants - Appellees.

No. 03-15585

D.C. No. CV-02-03731-VRW

MEMORANDUM\*

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. Bill Lockyer,  
Attorney General of the State of California,

Plaintiff - Appellant,

v.

RELIANT ENERGY, INC.; RELIANT  
ENERGY SERVICES, INC.; RELIANT  
ENERGY POWER GENERATION, INC.;  
RELIANT RESOURCES, INC.;  
RELIANT ENERGY COOLWATER,  
L.L.C.; RELIANT ENERGY ELLWOOD,  
L.L.C.; RELIANT ENERGY  
ETIWANDA, L.L.C.; RELIANT  
ENERGY MANDALAY, L.L.C.;  
RELIANT ENERGY ORMOND BEACH,  
L.L.C.,

Defendants - Appellees.

No. 03-15590

D.C. No. CV-02-02061-VRW

PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. Bill Lockyer,  
Attorney General of the State of  
California; BILL LOCKYER, Attorney  
General of the State of California,

Plaintiffs - Appellants,

v.

MIRANT CORPORATION; MIRANT  
CALIFORNIA, L.L.C.; MIRANT  
POTRERO L.L.C; MIRANT AMERICAS  
ENERGY MARKETING, L.P.; MIRANT  
CALIFORNIA INVESTMENTS, INC.;  
MIRANT AMERICAS INC.; SOUTHERN  
ENERGY GOLDEN STATES  
HOLDINGS, INC.,

Defendants - Appellees.

No. 03-15638

D.C. No. CV-02-02207-VRW

PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. Bill Lockyer,  
Attorney General of the State of California,

Plaintiff - Appellant,

v.

IDAHO POWER COMPANY,

Defendant - Appellee.

No. 03-15671

D.C. No. CV-02-03042-VRW

PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. Bill Lockyer,  
Attorney General of the State of California,

Plaintiff - Appellant,

v.

PUGET SOUND ENERGY, a Washington  
Corporation,

Defendant - Appellee.

No. 03-15673

D.C. No. CV-02-03036-VRW

PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. Bill Lockyer,  
Attorney General of the State of California,

Plaintiffs - Appellants,

v.

TUCSON ELECTRIC POWER  
COMPANY,

Defendant - Appellee.

No. 03-15675

D.C. No. CV-02-03041-VRW

PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. Bill Lockyer,  
Attorney General, et al.,

Plaintiff - Appellant,

v.

MERRILL LYNCH CAPITAL SERVICES  
INC., a Delaware Corporation,

Defendant - Appellee.

No. 03-15691

D.C. No. CV-02-03127-VRW

PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. Bill Lockyer,  
Attorney General of the State of California,

Plaintiffs - Appellants,

v.

CORAL POWER, L.L.C.,

Defendant - Appellee.

No. 03-15694

D.C. No. CV-02-02400-VRW

PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. Bill Lockyer,  
Attorney General of the State of California,

Plaintiffs - Appellants,

v.

TRANSALTA ENERGY MARKETING  
(CALIFORNIA), INC., a Delaware  
Corporation; TRANSALTA ENERGY  
MARKETING (US), INC., a Delaware  
Corporation; TRANSALTA ENERGY  
MARKETING CORPORATION, a  
Canadian Corporation,

Defendants - Appellees.

No. 03-15696

D.C. No. CV-02-03040-VRW

PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. Bill Lockyer,  
Attorney General of the State of California,

Plaintiffs - Appellants,

v.

BP ENERGY COMPANY, a Delaware  
Corporation,

Defendant - Appellee.

No. 03-16337

D.C. No. CV-02-03311-VRW

Appeal from the United States District Court  
for the Northern District of California  
Vaughn R. Walker, District Judge, Presiding

Argued and Submitted June 14, 2004  
San Francisco, California

Before: SCHROEDER, Chief Judge, CANBY, and TALLMAN, Circuit Judges.

These consolidated cases all arise from the electricity crisis that gripped California in the summer of 2000. The State of California, by its Attorney General, filed suit in state court against each of the respondents, alleging that they had violated California's proscription against unfair competition under § 17200 of the California Business and Professions Code by failing to file "the charge, rate, price or contract" for "each and every sale or purchase of wholesale energy" with the Federal Energy Regulation Commission ("FERC") as required by the Federal Power Act, and in charging "unfair, unreasonable, and therefore unlawful" rates in violation of the Act. We conclude that disposition of this case is wholly controlled by our decisions in *California v. Dynege, Inc.*, 375 F.3d 831 (9th Cir. 2004) ("*Dynege*"), and *Pub. Util. Dist. No. 1 of Snohomish County v. Dynege Power Mktg., Inc.*, No. 03-55191, 2004 WL 2021424 (9th Cir. Sept. 10, 2004) ("*Snohomish*"), and we affirm.

In *Dynege*, we held that California as plaintiff could not circumvent federal

jurisdiction by couching undeniably federal law claims in state law terms. *See Dynegy*, 375 F.3d at 843. Both of California’s claims in this case – that the respondents failed to file rates with FERC and charged unjust and unreasonable rates – are wholly predicated on violations of the Federal Power Act, which are within the exclusive jurisdiction of the federal courts. *See* 16 U.S.C. § 825p. Removal was therefore proper.<sup>1</sup>

We also held in *Dynegy* that a “state that voluntarily brings suit as a plaintiff in state court cannot invoke the Eleventh Amendment when the defendant seeks removal to a federal court of competent jurisdiction.” *Dynegy*, 375 F.3d at 848; *see also Oklahoma ex rel. Edmondson v. Magnolia Marine Transp. Co.*, 359 F.3d 1237, 1239-40 (10th Cir. 2004). California therefore was not entitled to use its Eleventh Amendment immunity as a shield against removal.

In *Snohomish*, we held that field preemption, conflict preemption, and the filed rate doctrine all preclude a district court from deciding a case that requires it to determine a fair price for wholesale electricity, even in a market-based system, because to do so interferes with FERC’s exclusive jurisdiction to set wholesale

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<sup>1</sup> As we stated in *Dynegy*, this case presents an exception to the general rule that federal jurisdiction does not exist when there is no private right of action conferred by federal statute. *See Dynegy*, 375 F.3d at 841-42; *Merrell Dow Pharm. v. Thompson*, 478 U.S. 804, 817 (1986).



electricity rates. *Snohomish*, 2004 WL 2021424 at \*5. In this litigation, California claims that the respondents charged an unjust and unreasonable rate, thereby implicitly asking the district court to determine what a fair price in a competitive market would have been. Such a determination would violate all three preemption doctrines. *See id.* Further, in *Dynegy*, we said that “remedies for breach and non-performance of FERC-approved operating agreements in the interstate wholesale electricity market fall within the exclusive domain of FERC.” *Dynegy*, 375 F.3d at 852. FERC decided that it need require only quarterly rate filings under a market-based tariff system “to assure that [sellers are] not exercising market power in the relevant market.” *See California v. B.C. Power Exch. Corp.*, 99 FERC ¶ 61,247 (2002), 2002 WL 32035504, at \*12. FERC further decided that the only remedy necessary for the respondents’ failure to file a quarterly report was to order the respondents retroactively to comply with the quarterly filing requirement. *See id.*, at \*16-19. If California objects to this remedy, it must address its objection to FERC, not to the federal courts. The district court correctly dismissed all of California’s claims.

**AFFIRMED.**